

William Boggs
Attorney at Law
P.O. Box 7881
Missoula, MT 59807

January 21, 1999

Karen Townsend
The Courthouse
Missoula, MT 59802

Re: State v. D.

Dear Karen:

As I said I would after our discussion in your office last Wednesday afternoon the 13th, I am writing to inform you of certain matters that may affect how you view this case. I am doing so in a spirit of cautious cooperation, believing, as I expressed to you then, that a resolution of this matter that can be constructive rather than destructive for everyone involved, is attainable and is perhaps within reach.

The first set of facts and circumstances I relate concerns events that transpired at Wendy's, which is, I have learned, somewhat of a social center for many of those involved in this case, either because they were employed there or hung out there with those who were. These events occurred subsequent to the incident which forms the basis of this prosecution [see **Chronology**, Attachment A to this letter]. The source of my information about these events is primarily the statements of third-party witnesses, not my client.

The second set of circumstances I relate is my client's recollection of the events that transpired just prior to, during, and immediately after his sexual encounter with Tasha V- at dawn on July 18, 1998. The source of my information about this is my client.

I. COLLATERAL EVENTS AT WENDY'S

As you are already aware from Tasha V-'s statement, a group of people including Pete D. and Tasha V. participated in an apparently casual, comfortable, and friendly social interaction just after closing at Wendy's Saturday midnight, July 18--less than 18 hours after the sexual encounter. Other persons present confirm Tasha's account of her showing up at Wendy's at closing time (knowing Pete had just ended his

shift there); of there being conversation and an extended period of playing with a beach ball in the parking lot; of warm "hugs" being exchanged between a number of individuals, including Pete and Tasha; and of the occasion being marked by a sense of good fellowship and normalcy.

You may not be aware that a more remarkable extended social interaction involving a number of the same persons, as well as others, took place in the same location after closing time on Wednesday or Thursday evening, July 22 or July 23--several days after Tasha filed a rape complaint with authorities, and after it was common knowledge in this social circle that she had done so. Again there was a lot of conversation inside and outside--conversation including Pete and Tasha; then in the parking lot there were more friendly transactions, including an interlude where Tasha, her friend Cathy [redacted] and Pete [redacted] lay on a grass island together giving one another "back massages." There were more "hugs", and, in the words of one observer, Tasha "grabbed Pete's butt and acted like nothing happened, like she was Pete's best friend." The evening ended on a friendly note, except that Tasha apparently screamed at Pete [redacted] former girlfriend, who was present.

Someone remarked that "people thought it was strange that Pete had forgiven Tasha so easily" for filing a rape report. However, this was shortly explained when the social group learned (or believed they learned) that Tasha had dropped the charges. This seemed to be confirmed by the fact that Pete was not arrested and life went on as usual. When Pete was arrested weeks later, "everyone was surprised."

Pete [redacted] former girlfriend Sara N. [redacted] expressed to me her opinion that "if Pete had sat down with Tasha and had a long serious talk about what happened that night [July 18] and why, and about their relationship, these charges would never have been filed."

II. THE TRANSACTION

Although my client remembers a great deal of detail about the course of events from midnight Friday July 17 until dawn on July 18, 1998 (a Saturday morning perceived as a continuation of "Friday night"), I am not going to burden this narrative with many of them which occurred before the sexual encounter, especially since for the most part they supplement and harmonize with the accounts of the other participants. Suffice it to say that six persons [Pete, Tasha, Adam [redacted] the two Felton girls, and John [redacted]] arranged at Wendy's to meet later at Adam [redacted] Z's house to party, and did rendezvous there somewhat after 2:00 a.m., the Felton girls bringing a plastic Seven-Up bottle full

of vodka. Everyone sat in the back of Adam's pickup for a period of time drinking and sharing a little marijuana. They then went to the Bonner bridge in Tasha's pickup to continue drinking until they exhausted their supply, at which time Pete and John jumped off the bridge and swam, Adam and Tasha swam near the bank, while the others talked. It was then decided it was very late and the two Felton girls needed to be taken home. After a little problem with the pickup being stuck, they returned to Adam's house, where it was agreed Pete D. would drive both the girls and John Z. home in Tasha's pickup; with Tasha and Adam remaining at Adam's to sleep. This was done, but on the way home from dropping off the girls Pete bought breakfast for John and himself at Hardees. By the time they were driving back out to Bonner it was light already, birds were singing.

The only point that is very important about this part of the evening that is not at least alluded to in Tasha's statement is the fact that during the partying in the pickup truck at Adam's house, Tasha and Pete were somewhat affectionate physically, were cuddled up together and were flirting. Pete's description of this is not of an exaggerated "coming on" or anything of that nature, but of companionship with romantic undertones that left him certainly interested.

At dawn, Pete dropped off John Z. (who lived nearby) and continued to Adam's where he went to the upstairs bedroom over the garage. Adam and Tasha were there; Adam told Pete that Tasha had been sick, and that he (Adam) was going downstairs to try and get some sleep. Pete says Tasha did not respond to this conversation and was apparently asleep.

Pete sat on the couch smoking a cigarette, then eventually went downstairs to go outside and pee. Tasha still slept on the bed. Pete came back up, lay down on the couch again, and relaxed [see **Bedroom Diagram**, Attachment B to this letter for a description of the room].

At this point, Tasha awoke ("very groggily", according to Pete), opened her eyes, saw him on the couch, sat up on the bed and moved over to lean up against him. She asked for a drag on his next cigarette, which he gave her, wrapped her arm around his leg, and they sat there for a little while, not talking. Right before the cigarette was finished, she lay back down on the bed, pulling on his pant leg as she did so. Then he lay down beside her.

At this point Tasha nestled up against Pete and caressed him affectionately. He started fondling her breasts and she moaned a little, seeming pleased. Then they were both

touching one another intimately and kissing, though Pete says he refrained from the normal tongue-kissing because in the back of his mind he remembered being told she'd been sick.

After more fondling, they--in Pete's words--"took off one another's clothes", that is to say, they fumblingly undressed and helped one another undress. He then entered her--certainly without protest--and they had sexual intercourse. After awhile, she seemed to fall asleep; Pete had apparently never experienced anyone falling asleep during intercourse, so he stopped. He put on his trousers and fell asleep beside Tasha--outside the covers, since it was hot upstairs and he was hot.

They both slept until after noon, when Adam woke them and told them to come downstairs. Pete got dressed and went downstairs first, shortly followed by Tasha. Pete, Tasha and Adam then had a routine "morning" conversation downstairs in the main part of the house. Eventually all three drove to Bonner bridge and Deer Creek turnoff, swam in the river, at one or both places, and later went to work at their respective jobs. Later that night Tasha showed up at Wendy's at closing time, played beach ball in the parking lot, and things seemed fine.

Pete says that during the entire sexual transaction [which appears to me to have lasted a half-hour or less] Tasha looked at him a number of times with recognition--not blankly; made sounds and gestures which were or seemed to be normal erotic ones; and participated in the lovemaking, though without saying very much. He said little himself, he says. He admits he was surprised when she fell asleep during the act of intercourse.

Pete says he had no inkling anything was wrong until Sunday when he heard that Tasha had told someone he "took advantage of her."

Pete says that Tasha asked to talk with him about what happened after she initially filed charges, but that they never had a satisfactory conversation. He too was under the impression the charges had been dropped until he was arrested.

CONCLUSION

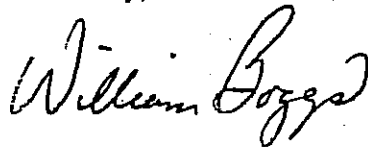
It appears to me this rape charge may be a result of egregious failures of communication rather than the perpetration of any criminal act. I am not suggesting that Tasha is particularly ill-motivated in this, but that as a very young woman she is responding to perceived dissonance and disappointment with romantic events, and also to perceived

(and real) lack of sensitivity and ability to communicate in the opposite sex, in what is perhaps not the most constructive way. Clearly Pete and Tasha did not communicate effectively that night, and not very effectively afterward either. It may well be that Tasha had a sexual experience she did not desire, while acting outwardly in a way which led Pete in perfect good faith (though with perhaps less than perfect judgment) to believe she did desire it. She also may not have a clear memory of how she acted. Also, she was quite passive. For thousands of years, passivity, too, has been one of the traditional manifestations of consent.

What I do not want to see happen here is for a young man's life to be destroyed on account of immature actions and confused, inarticulate thoughts on the part of two young people, himself and Tasha. I think it is a contemporary tragedy that our young men and women are at such "a loss for words" about life: this unfortunate situation is a good example. I think it would be a tragedy gravely compounded if Pete were to be ruined on that account--though as you know I acknowledge he has other problems that need addressing in any case.

I await the results of your further consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "William Boggs". The signature is written in dark ink and is positioned above the printed name.

William Boggs